

CHAPTER 26A. COMPREHENSIVE MAINTENANCE PLANS

SUBCHAPTER 1. GENERAL PROVISIONS

6A:26A-1.1 Purpose

These rules are intended to implement the provisions of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72, specifically sections 3, 9(b)(3) and 13(d) of EFCFA (N.J.S.A. 18A:7G-3, 9(b)(3) and 13(d)), requiring the Commissioner of the Department of Education to promulgate rules requiring districts to have comprehensive maintenance plans for school facilities and make the appropriate investment in the maintenance of school facilities.

6A:26A-1.2 Scope

(a) These rules shall apply to every district that owns school facilities or operates school facilities owned by another party, when the operating district is responsible for maintenance of the school facilities.

(b) Each district that operates school facilities owned by other districts shall include such school facilities in the operating district's comprehensive maintenance plan, and shall forward a copy of the comprehensive maintenance plan to the owning district.

6A:26A-1.3 Definitions

As used in this chapter, unless the context clearly indicates otherwise the following words and terms shall have the following meanings:

"Act" or "EFCFA" means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72.

"Annual maintenance budget amount" means the amount required to be included in the district's annual budget certified for taxes as a deposit into the maintenance reserve account or in the required maintenance line-item accounts.

"Area cost allowance" means \$138.00 per square foot for the 2000-2001 school year and shall be inflated by an appropriate cost index for the 2001-2002 and 2002-2003 school years. Thereafter, pursuant to N.J.S.A. 18A:7G-3, it shall be established as part of the Biennial Report issued by the Department pursuant to N.J.S.A. 18A:7F-4(c). The area cost allowance used in determining preliminary eligible costs of school facilities projects shall be that of the year of application for approval of the school facilities project.

"Authority" means the New Jersey Economic Development Authority established pursuant to N.J.S.A. 34:1B-1 et seq. and its subsidiary, the New Jersey Schools Construction Corporation.

"Building system" means a set of related or similar building components that work together to perform a major function in a building or facility.

"Capital maintenance" means maintenance intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems, and can be considered to constitute or be part of a school facilities project.

"Capital project" means a school facilities project, other capital project or land acquisition project pursuant to N.J.A.C. 6A:26-7.1.

"Commissioner" means the Commissioner of Education or designee.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit that includes all funds and account groups, as defined in N.J.A.C. 6A:23-1.2. The report summarizes the activities and operations performed by all units that constitute the reporting entity. The combined financial position and results of operations are presented as if there were a single operating unit.

"Comprehensive maintenance plan" means a multi-year maintenance plan developed by a school district covering required maintenance activities for each school facility in the district pursuant to this chapter.

"Department" means the New Jersey Department of Education.

"District" means a district board of education, as defined below, and includes a local or regional school district established pursuant to N.J.S.A. 18A:8-1 et seq. or 18A:13-1 et seq., a county special services school district established pursuant to article 8 of N.J.S.A. 18A:46-1 et seq., a county vocational school district established pursuant to article 3 of N.J.S.A. 18A:54-1 et seq., and a State-operated school district established pursuant to N.J.S.A. 18A:7A-34 et seq.

"District board of education" or "board" means the local board of education or State district superintendent in the case of a State-operated school district.

"Facility" means a school facility, temporary facility or other facility.

"Filing year" means the year in which the comprehensive maintenance plan is filed with the Department's County Superintendent's Office.

"Maintenance Reserve Fund" means the account established by a district pursuant to N.J.S.A. 18A:7G-13 into which a district deposits monies to be used exclusively for required maintenance of school facilities.

"Office" means the Office of School Facilities in the Division of Finance in the Department of Education.

"Other facilities" means athletic stadiums, grandstands, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration.

"Replacement cost of the school facility" means the area cost allowance multiplied by the gross square footage of the building for the year specified in this chapter.

"Required maintenance" means specific maintenance activities required for system warranty purposes and which are necessary for the purpose of keeping a school facility open and safe for use or in its original condition, including repairs and replacements to a school facility's heating, lighting, ventilation, security and fixtures to keep the facility or fixtures in effective working condition, and which does not consist of routine maintenance or capital maintenance.

"Routine maintenance" means contracted custodial or janitorial services, expenditures for the cleaning of a school facility or its fixtures, the care and upkeep of grounds or parking lots, removal of illegal locks or unauthorized construction and the cleaning of, or repairs and replacements to, movable furnishings or equipment, or other expenditures which are not required to maintain the original condition over the school facility's useful life.

"School facility" means and includes any structure, building or facility used wholly or in part for educational purposes by a district or community provider, and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, steam generating facilities and other central service facilities, including central kitchens and maintenance shops, but shall exclude other facilities as defined in this section.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project shall be new construction in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance, as defined by N.J.A.C. 6A:26-1.2, do not constitute school facilities projects.

"Useful life" means the applicable recovery period for depreciation purposes determined under Section 168 of the Internal Revenue Code of 1986, 26 U.S.C. § 168 as amended and supplemented, and the applicable regulations thereunder.

SUBCHAPTER 2. REQUIRED MAINTENANCE ACTIVITIES AND EXPENDITURES

6A:26A-2.1 Required maintenance activities

(a) Required maintenance activities are those specific activities necessary for the purpose of keeping a school facility open and safe for use or in its original condition, and for keeping its constituent building systems fully and efficiently functional and for keeping their warranties valid. The activities address interior and exterior conditions; include preventive and corrective measures; and prevent premature breakdown or failure of the school facility and its building systems.

(b) Required maintenance activities include, but are not limited to, the following:

1. Periodic inspection, testing and certification of building systems or components required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
2. Periodic service required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
3. Periodic replacement of consumable parts required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
4. Repairs or localized replacements of system components resulting from breakage, misuse or vandalism;
5. Refinishing of interior floors and walls, including preparation, stripping, painting and refinishing;
6. Consulting services needed to determine required maintenance; and
7. Tests to monitor indoor air quality.

(c) Each district shall determine the required maintenance activities to reasonably maintain each school facility in the district, and shall report these activities in its annual comprehensive maintenance plan pursuant to N.J.A.C. 6A:26A-3.

6A:26A-2.2 Required maintenance expenditures

(a) Expenditures for required maintenance activities set forth in N.J.A.C. 6A:26A-2.1 shall qualify as investments in maintenance for purposes of calculating the required maintenance expenditure in (d) and (e) below, the annual required maintenance budget amount pursuant to N.J.A.C. 6A:26A-4.1, and the maintenance factor (M) in N.J.S.A. 18A:7G-9.

(b) Expenditures that qualify as required maintenance include supplies and materials, contracted labor, and salaries of district employees who are exclusively dedicated to the performance of required maintenance activities, or for the payment of contracts for required maintenance.

1. When district personnel who are not exclusively dedicated to the performance of required maintenance activities perform required maintenance activities, districts may credit that portion of the salaries of such personnel to required maintenance expenditures where task-specific documentation of such activities is available and subject to audit.

(c) Districts shall maintain their accounting records for required maintenance at the school facility level and report the final expenditures, by school facility, in the district's comprehensive annual financial report. Districts shall have available the expenditure records, detailed by school facility, for verification by the district auditor beginning in the year 2002-2003.

(d) Beginning in the fourth year after occupancy of a school facility that was funded as a school facilities project under EFCFA, the required maintenance expenditure shall be equal to or exceed 0.2 percent of the related school facility's replacement cost per year.

(e) For existing school facilities for which a district seeks State facilities aid pursuant to EFCFA for rehabilitation or alteration, the required maintenance expenditure shall be equal to or exceed two percent of its replacement cost over the previous 10 years, effective July 18, 2000.

SUBCHAPTER 3. DISTRICT COMPREHENSIVE MAINTENANCE PLANS

6A:26A-3.1 Requirements for comprehensive maintenance plans

(a) Each district shall develop a comprehensive maintenance plan to document prior year required maintenance activities and expenditures and the district's planned required maintenance activities and budgeted costs for the filing year and the one year subsequent to the filing year. The plan shall not include activities for capital maintenance or routine maintenance.

1. The comprehensive maintenance plan shall be submitted to the County Superintendent by November 15 of every school year accompanied by a Board resolution approving the submission of the plan. The comprehensive maintenance plan shall be submitted as part of the district's Quality Assurance Annual Report (QAAR).

(b) Each school facility in the district shall be included in the comprehensive maintenance plan. Other facilities, as defined in N.J.A.C. 6A:26A-1.3, shall not be included in the comprehensive maintenance plan. However, districts are encouraged to maintain other facilities.

(c) The comprehensive maintenance plan shall contain the following information:

1. For the year prior to the filing year, a listing of the completed maintenance activities for each school year facility that corresponds to the actual expenditure for each school facility as reported in the district's most recent comprehensive annual financial report (CAFR) on the schedule of required maintenance expenditures shall be attached to the listing of activities. A copy of the CAFR's schedules of required maintenance expenditures shall be attached to the listing of activities.

i. For reporting required maintenance expenditures in the years ending June 30, 2001 and June 30, 2002, a district may allocate the district total required maintenance expenditure to each school facility by proration according to its gross square footage or it may report actual expenditures by school facility if such records exist.

ii. For the years ending June 30, 2003 and thereafter, the expenditures for required maintenance activities for the years prior to the filing year shall be reported by school facility in the district;

2. Beginning in the November 2003 comprehensive maintenance plan, a worksheet in a format provided by the Commissioner of total expenditures for required maintenance by school facility for 10 years prior to the filing year, or the number of years since the enactment of EFCFA, whichever is less, compared to each school facility's required maintenance expenditure amount under N.J.A.C. 6A:26A-2.2(d) and (e), as applicable;

3. For the filing year, the required maintenance activities planned for each school facility and estimated costs included in the filing year budget;

4. For the year subsequent to the filing year:

i. The required maintenance activities planned for each school facility and estimated costs; and

ii. The required annual maintenance budget amount for each school facility pursuant to N.J.A.C. 6A:26A-4.1;

5. Asbestos abatement activities planned for the year, in conformance with the district's asbestos management plan pursuant to Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § § 2641 et seq.;

6. A schedule for required radon testing for each school facility specifying the spaces to be tested every five years pursuant to N.J.S.A. 18A:20-40 and safe drinking water testing per N.J.A.C. 7:10; and

7. A plan to correct deficiencies identified in the approved long-range facilities plan regarding substandard spaces, temporary classroom units and dual use spaces approved for use in the district by the County Superintendent pursuant to N.J.A.C. 6A:26-8.1(d).

6A:26A-3.2 Submission and review of comprehensive maintenance plans

(a) The comprehensive maintenance plans shall be submitted by board resolution to the County Superintendent every school year. The comprehensive plan shall be submitted as part of the district's Quality Assurance Annual Report (QAAR).

(b) The board resolution shall include a certification that the comprehensive maintenance plan:

1. Is complete and in compliance with this chapter; and

2. Includes activities and expenditures for each school facility that qualify as required maintenance pursuant to N.J.A.C. 6A:26A-2 and are reasonable to ensure such facilities are kept open and safe for use or in its original condition and maintain the validity of warranties.

(c) The County Superintendent shall notify a district if a comprehensive maintenance plan is reviewed and found to be deficient based upon the standards set forth in this chapter. In response to such notification, the district shall submit a revised comprehensive maintenance plan to the County Superintendent, addressing the deficiencies identified by the County Superintendent. The revised comprehensive maintenance plan shall be submitted within 30 days from the date of notification. If a district does not receive notification by the County Superintendent within 90 days from submission date, the plan shall be deemed approved.

(d) The County Superintendent shall review the implementation of the comprehensive maintenance plans in each district at the time of cyclical evaluations of the district pursuant to N.J.S.A. 18A:33-1 et seq. and N.J.A.C. 6A:30-2 to ensure that the plan addresses required maintenance activities and that the reported activities actually occurred.

6A:26A-3.3 Requirements for a maintenance package for newly completed school facilities projects

(a) As a condition for the completion of a school facilities project, the district shall obtain from the architect or engineer a certification that the contractor for the school facilities project has provided a maintenance package containing all of the following:

1. Manufacturer's warranties;
2. Owner's and training manuals;
3. Required maintenance and testing instructions; and
4. A summary of (a)1 through 3 above.

(b) The maintenance package shall cover the useful life of the school facilities project and be incorporated into the district's comprehensive maintenance plan.

(c) At the completion of a school facilities project, the district shall certify in writing to the Office that the architect, engineer or contractor provided all of the required items listed in (a) above in order to close out the school facilities project.

SUBCHAPTER 4. REQUIRED MAINTENANCE BUDGET AMOUNT AND MAINTENANCE RESERVE

6A:26A-4.1 Required maintenance budget amount

(a) The required annual maintenance budget amount for each district, as reported in its comprehensive maintenance plan shall be included in the district's annual budget certified for taxes in the required maintenance line-item accounts and/or as a deposit into the maintenance reserve in accordance with N.J.A.C. 6A:26A-4.2.

(b) The required annual maintenance budget amount shall be calculated by totaling the sum of the replacement cost as of the current year for each school facility multiplied by 0.002 and shall correspond to the amount reported in the most recent comprehensive maintenance plan submitted pursuant to N.J.A.C. 6A:26A-3.

1. The required annual budget amount can be adjusted up or down, with the County Superintendent's approval, based upon prior year expenditures to ensure an overall expenditure of two percent on required maintenance per school facility over 10 years.

2. The replacement cost of the current year of a school facility shall be calculated by multiplying the area cost allowance by the current gross square footage of the building.

(c) If a district does not annually budget the required amount, calculated pursuant to this section, in the budget certified for taxes, the County Superintendent shall not approve the district's budget unless the County Superintendent determines that the district may budget less than the full amount as follows:

1. If a district determines that it cannot budget the required amount, the district shall submit proof acceptable to the County Superintendent of its inability to budget the required amount when it submits its budget to the County Superintendent. This proof shall be accompanied by a plan to ensure that the required two percent be expended over 10 years pursuant to EFCFA and this chapter.

i. If the County Superintendent concurs with the district's explanation of its inability to budget the full amount and approves of its plan, the district may budget less than the full amount as approved by the County Superintendent. The County Superintendent will not reject the district's budget on this ground.

ii. If the County Superintendent does not concur with the district's explanation of its inability to budget the full amount or does not approve of its plan, the district shall budget the full amount. The County Superintendent will not approve any budget that does not comply with this section.

6A:26A-4.2 Maintenance reserve account

(a) A district shall establish, by board resolution, a maintenance reserve account to be used to implement required maintenance of a district. Funds from the maintenance reserve account may not be used for routine or capital maintenance.

(b) A district may make deposits into the maintenance reserve account at any time by board resolution to meet the required maintenance of the district as follows:

1. Transfer of undesignated, unreserved general fund balance; or
2. Transfer of excess, undesignated, unreserved general fund balance that is anticipated to be deposited during the current year in the advertised recapitulation of balances of the subsequent year's budget that is certified for taxes.

(c) Funds may be withdrawn from the maintenance reserve account and appropriated into the required maintenance account lines at budget time or any time during the year by board resolution for use on required maintenance activities by school facility as reported in the comprehensive maintenance plan.

1. Funds withdrawn from the maintenance reserve account are restricted to required maintenance appropriations and may not be transferred to any other line-item account.

(d) In any year that maintenance reserve account funds are withdrawn, unexpended required maintenance appropriations, up to the amount of maintenance reserve account funds withdrawn, shall be restored to the maintenance reserve account at year-end.

(e) At no time, shall the maintenance reserve account have a balance that exceeds four percent of the replacement cost of the current year of the district's school facilities. If the account exceeds this maximum amount at June 30, the excess shall be reserved and designated in the subsequent year's budget.

SUBCHAPTER 5. THE MAINTENANCE FACTOR IN STATE DEBT SERVICE AID

6A:26A-5.1 The maintenance factor in State debt service aid

(a) State debt service aid shall be calculated pursuant to N.J.A.C. 6A:26- 3.8. The Maintenance Factor "M," pursuant to N.J.A.C. 6A:26-3.8(a), shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:

1. Effective July 18, 2010 (that is, 10 years from the date of the enactment of EFCFA, P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et seq.)), the maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation or repair, or for an addition to a school facility, shall be zero for all school facilities projects for which the district fails to demonstrate that over the 10 years preceding issuance of the school bonds it incurred a net investment in maintenance of the related school facility of at least two percent of the replacement cost of the school facility, pursuant to N.J.S.A. 18A:7G-7(b) and N.J.A.C. 6A:26A-4.1, using the area cost allowance of the year 10 years preceding the year in which the school bonds are issued; or

2. For new construction, additions, and school facilities aided under N.J.S.A. 18A:7G-7(b) supported by financing issued for projects approved by the Commissioner after July 18, 2000, beginning in the fourth year after occupancy of the school facility, the maintenance factor shall be reduced according to the following schedule for all school facilities projects for which the district fails to demonstrate in the prior fiscal year an investment in maintenance of the related

school facility of at least two-tenths of one percent of the replacement cost of the school facility, determined pursuant to N.J.S.A. 18A:7G-7(b) and N.J.A.C. 6A:26A-4.1.

(b) A district's failure to make the required expenditures for maintenance for existing or new facilities pursuant to (a) above shall result in a Maintenance Factor (M) of less than one, and shall reduce debt service aid as follows:

Annual Maintenance Percentage	Maintenance Factor (M)
.199 percent to .151 percent	75 percent
.150 percent to .100 percent	50 percent
Less than .100 percent	Zero

SUBCHAPTER 6. WITHHOLDING OF STATE SUPPORT FOR NON-COMPLIANCE

6A:26A-6.1 Withholding of State funds for non-compliance

(a) Pursuant to N.J.S.A. 18A:55-2, the Commissioner shall direct the State Treasurer to withhold funds payable by the State from any district that fails to comply with N.J.A.C. 6A:26 and this chapter. For purposes of this subchapter, "Funds payable by the State" include, but are not limited to, State support under EFCFA. The non-compliance may:

1. Constitute an event of default under a grant agreement between the Authority and the district for the district receiving State support under N.J.S.A. 18A:7G-5 (pre-development activities), 13(a) or 15 and subject the district to Authority remedies for the default, including the reimbursement or the withholding of State support under EFCFA, and if the Authority refers the matter to the Department in lieu of withholding State support under EFCFA, the Department may upon review of the matter direct the State Treasurer to withhold funds payable by the State from such district;

2. In the case of a district receiving debt service aid under N.J.S.A. 18A:7G-9 or electing to receive a grant under N.J.S.A. 18A:7G-15, result in reducing the "M" factor in the formula for debt service aid in N.J.A.C. 6A:26-3.8 to zero pursuant to Section 9(b)(1) or 9(b)(2) of EFCFA and/or subject the district to a withholding of funds payable by the State; or

3. In the case of a district for which the Authority constructs the school facilities project, subject the district to a withholding of funds payable by the State, including State support under EFCFA.

SUBCHAPTER 7. APPEALS

6A:26A-7.1 Appeals of Commissioner's determinations

(a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the New Jersey State Board of Education pursuant to N.J.A.C. 6A:4.

(b) Appeals arising from decisions of the Department may be made in writing, and an opportunity given for an informal hearing before the Assistant Commissioner of the Division of Finance (Assistant Commissioner). Such written request for an informal hearing must be made within 30 days of the receipt of the Department's decision.

(c) In the event of an adverse decision after such an informal hearing, or if the district determines not to seek an informal hearing, the district may request, within 90 days of the decision of the Assistant Commissioner or the determination of the Department if an informal hearing is not sought, a formal hearing pursuant to N.J.S.A. 18A:6-9 and 18A:6-24 and N.J.A.C. 6A:3. Such hearings will be governed by the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.